

# NOTES | March 30, 2012

## Mono Basin Core Working Group Meeting in Bishop

Prepared by Center for Collaborative Policy

*Core Group approved May 30, 2012.*

### Meeting in Brief

The State Water Resources Control Board (SWRCB) staff clarified confusion that had arisen from the presentation of draft License 10191 (Amended License for Diversion and Use of Water) to the Core Working Group (Core Group) at the January 19<sup>th</sup> Core Group meeting and provided guidance for moving forward. The Synthesis Report and Feasibility Report should remain the foundation and provide scope and direction to the Core Group. The SWRCB staff encourages the Core Group to be flexible in crafting a solutions package and to not feel bound to the draft License presented on January 19<sup>th</sup>. The SWRCB staff will assume responsibility for determining the proper-delegated authority and processes to implement agreements among the parties. Maximizing agreement is of primary importance and will expedite the process. In the event that a Change Petition is necessary, external parties may protest the requested change, but not LADWP's underlying water rights. The SWRCB staff is committed to keeping the facilitated process moving forward and can grant an extension to the original deadlines, as needed.

The Core Group planned for an Engineering Meeting and reviewed communication protocols.

### Action Items

Due		Action Items
	Tanaka	Circulate new model to the Modeling Work Group
	Vorster	Propose final rule definitions for LADWP to review?
	Drew	Provide latest version of the Monitoring document to the Core Group
	Trush & Taylor	Review the Geosyntec study
	Regelbrugge	Confirm SCE outcome
	Attorneys	Parker & Walker: Convene attorneys to review options to preserve water rights while implementing Synthesis Report recommendations for continued curtailment. Attorneys to explain scope of concerns regarding loss of water rights and provide explanation of provisions offered by 1707 in-stream flow dedication or other option. For details on 1707 as well as the relationship of curtailment to temperature considerations for fish, see July 13-14 Meeting Summary, p. 4-6.
On hold	Modeling Work Group	<b>Lee Vining Flows:</b> Address with Modeling Work Group: potential to bring back to an 8-year flood event if Saddlebag releases 40cfs on Lee Vining (Synthesis Report, p. 78); modeling approaches for Parker/Water diversions (under the 98-05 rules)
On hold	Tillemans	Get data on 1995-2001 (when Grant did not go below spill for six consecutive years) to determine impact on dam and dam safety

## **State Water Resources Control Board Update**

The State Water Resources Control Board (SWRCB) staff clarified confusion that had arisen from the presentation of draft License 10191 (Amended License for Diversion and Use of Water) to the Core Working Group (Core Group) at the January 19<sup>th</sup> Core Group meeting. Subsequent uncertainties remained regarding the scope of the facilitated process and whether LADWP was authorized to a) respond only to Order 98-05 or b) work with the Core Group to propose a solution that goes beyond Order 98-05 to incorporate the Synthesis Report and Feasibility Report (July 2010). These uncertainties have prevented the Core Group from making further progress in the facilitated process.

The Core Group requested clarity from the SWRCB staff on two potential options for LADWP:

### **a. LADWP responds only to Order 98-05 and draft Amended License 10191**

LADWP interprets Order 98-05 such that LADWP's regulatory obligation is to respond to Item 1b.2a and 2b (Order 98-05, p. 61; also p. 10 of draft Amended License 10191). This item addresses the magnitude, duration, and frequency of the Stream Restoration Flows, but does not authorize LADWP to address base flow or other issues identified on the *Mono Basin Feasibility Report summary table* (Bob Marley chart). LADWP feels obligated to prioritize its response to Order 98-05 and draft Amended License 10191, as they are the only written directives from the SWRCB and as LADWP's deadline for submittal to the SWRCB is approaching. Under this scenario, LADWP's August 1 (2012) submittal to the SWRCB would be a response to Order 98-05 rather than a revision of the original Feasibility Report. One potential risk to this approach would be failure of the Core Group to reach consensus.

### **b. LADWP (with the Core Group) responds to the Synthesis Report and Feasibility Report**

This scenario assumes that, based on SWRCB engagement since Order 98-05 (including the SWRCB's role and authorization during the development of Synthesis Report recommendations), the Board is open to the Core Group considering an integrated suite of options as a way to reach consensus on potential solutions. Integrated options could address base flow and other items identified on the Feasibility Report summary table (Bob Marley) chart. The lack of written directive from the SWRCB regarding this approach has made Core Group adoption of this scenario a challenge. Addressing ancillary issues beyond the scope of Order 98-05 presents risk by potentially subjecting LADWP to a Change Petition process. Core Group uncertainties regarding what would trigger a Change Petition, as well as the impact of a Change Petition on LADWP water rights, have been a barrier to moving forward with this option.

## **SWRCB Staff Response**

In response to the Core Group's request for guidance, the SWRCB staff clarified the following:

- The SWRCB staff sees two options. The Core Group could agree or disagree on the feasibility of implementing Synthesis Report recommendations. Alternately, it could propose a package of solutions to address the same factors. The SWRCB prefers to receive one integrated agreement.
- The Synthesis Report and Feasibility Report (July 2010) should remain the foundation and provide scope and direction to the Core Group, despite SWRCB staff acknowledgement that the Synthesis Report produced recommendations that were broader than what current SWRCB staff would have expected. While these documents frame the scope, they do not limit the process to a subset of the Synthesis Report. The Core Group may deviate and identify areas of agreement and disagreement to submit to the Board for determination. Using these documents for guidance will also address the obligations outlined in Order 98-05.
- The Core Group is welcome to propose new terms in an Amended License format as presented at the January 19<sup>th</sup> meeting (based on Order 98-05 or another format that the group prefers. The SWRCB staff recognizes that the draft Amended License is one of any number of approaches that may be used to propose changes under Order 98-05 and the more integrated proposals that the Core Group has been developing. The SWRCB encourages the Core Group to be flexible in crafting a solutions package and to not feel bound to the draft Amended License presented at the January 19<sup>th</sup> meeting.
- The SWRCB will assume responsibility for determining the proper delegated authority and processes to implement requested changes. Agreements are typically handled by the Executive Director or Deputy Director, while disagreements are handled by the Deputy Director; Resolutions 2002-0104 (Executive Director) and 2007-0057 (Deputy Director) further define delegated authority. SWRCB staff are willing to review a preliminary draft proposal from the Core Group and provide an analysis of delegated authority prior to the Core Group's final submission.
- Requested changes may not require a Change Petition. This depends on the scope of requested changes, as well as whether there is agreement among the parties. Maximizing agreement among the parties is of primary importance to the SWRCB staff: "where there's agreement, everything moves faster." If the Core Group is in agreement, a Change Petition process is likely to be expedited.
- The SWRCB staff will prioritize proposed changes that do *not* require a Change Petition. In the event that a Change Petition is necessary, external parties may protest the requested change but not LADWP's underlying water rights. Agreements among the Core parties are likely the most certain path to approval of any proposal.
- The SWRCB staff is committed to keeping the facilitated process moving forward and can grant an extension to the original deadlines, as needed. Granting extensions is a straightforward process. The SWRCB staff is available to clarify any points of confusion and

encourages the Core Group to initiate contact as needed to clear up any misunderstandings about process.

### **Dates for Moving Forward**

- **June 1** – End of the facilitated process
- **August 1** – (extended from original date of July 28). LADWP to submit amended Feasibility Analysis in response to the Synthesis Report. It is LADWP's decision whether this takes the form of a completed version of the draft Amended License presented at the January 19<sup>th</sup> meeting or an integrated suite of solutions proposed in collaboration with the Core Group. If the former, SWRCB staff will clarify whether the due date remains unchanged.
- **October 1** – End of comment period for parties to respond to LADWP submittal. The goal is for the Core Group to have reached agreement regarding which parts of the Synthesis Report are to be proposed for inclusion in the Amended License.

### **Next Steps**

While LADWP feels that its immediate obligation is to respond to paragraph 1b.2a, it supports continued Core Group dialogue and efforts to resolve the issues that are beyond the scope of Order 98-05. LADWP has concerns at how long the process has taken to date. Due to similar concerns about delays provoked by legal uncertainties, attorney representatives of Core Group members request to participate in any future discussions that address issues with legal consequences.

- LADWP will determine how to respond to the information shared today by the SWRCB staff.
- LADWP will respond directly to Order 98-05 and also determine whether and how to incorporate additional considerations from the Synthesis Report.
- The SWRCB staff would be willing to draft written guidance to address delegated authorities as well as general triggers that would require a Change Petition.

### **Engineering Meetings**

Meeting with the engineers is one way for the Core Group to advance conversations about the Synthesis Report, discuss alternatives and identify potential efficiencies that could reduce costs. Funding for any potential infrastructure change remains a key concern, and LADWP will need to explain the rationale for any increased cost to ratepayers. Exploring creative financing options can benefit all Core Group members, and identifying matching funding may enable certain alternatives to become feasible.

The Core Group will hold an Engineering Meeting to address the three outlet concepts, ways to reduce costs and increase functionality, a timeline, and planning-level cost estimates. The meeting will be held in L.A. and by video conference in Bishop, as well as by phone. CalTrout and MLC have prepared a draft agenda for the meeting (*Mono Basin process – Engineering Meeting – Draft by MLC and CT, March 27, 2012*).

## Modeling Work Group

The document *Task proposals for modeling subgroup (Draft by MLC, March 27, 2012)* identifies five high-priority model modifications. LADWP reported on the status of each:

Priority	Proposed Task	Status
1.	Fix input hydrology assumptions about irrigation to match current practices.	Complete
2.	Fix year type identification issue previously discussed by modeling group.	Complete
3.	Fix zero data issue in current input hydrology	Complete
4.	Discuss model handling of export limitations post-transition at 6388 – daily or annual?	Unable to be resolved by Modeling WG (policy issue)
5.	Discuss allowing user modification of input hydrology for scenario testing.	<i>Incomplete</i>

The current rules are not final and must be refined to ensure that they work operationally for LADWP, prior to submission to the SWRCB. At present, the Modeling Work Group does not need to re-run the Scenarios.

### Next Steps

1. Stacy Tanaka to circulate the new model to the Modeling Work Group.
2. Peter Vorster to propose final rule definitions for LADWP to review.

## Core Working Group Communication Protocols

There are implications for LADWP Core Group members if other Core Group members discuss the facilitated process with LADWP commissioners and staff not actively involved in the process. The Mono Lake Committee (MLC) Core Group members want to be able to communicate its interests and potential solutions, and for all LADWP staff to be aware of MLC's level of commitment to the process. One option is for Core Group members to work together to brief non-Core Group LADWP staff.

## Meeting Schedule

- Upcoming Core meetings are April 18, May 2-3, May 17, and May 30.
- April 23, 10:00-1:00: Engineering Meeting (in L.A. and Bishop)
- An updated schedule of all meetings is on Dropbox (Dropbox > Work Plan – Schedule > All Meetings). It provides the date, time, and location of all meetings of the Core Group and Working Groups. Please consult this for the most updated status of upcoming meetings.

## **Attendance**

### **IN PERSON**

Gene Coufal, Los Angeles Department of Water and Power (LADWP)

Lisa Cutting, Mono Lake Committee (MLC)

Mark Drew, California Trout

Ali Karimi, LADWP

Dave Martin, LADWP

Geoff McQuilkin, MLC

Bruck Moges, LADWP

Steve Parmenter, Department of Fish & Game (DFG)

Jon Regelbrugge, Forest Service

Brian Tillemans, LADWP

James Yannotta, LADWP

### **BY PHONE**

Greg Reis, MLC

Ross Taylor, Ross Taylor & Associates

Tobi Tyler, Lahontan Regional Water Quality Control Board

Peter Vorster, MLC

#### *For SWRCB update and Attorney Call*

Greg Brown, State Water Resources Control Board (SWRCB)

Phil Crader, SWRCB

David Rose, SWRCB

#### *For Attorney Call only*

Jim Kassel, Assistant Deputy Director for SWRCB

Bruce Dodge, MLC

Nancee Murray, DFG

Julie Riley, LADWP

Richard Roos-Collins, CalTrout

### **STAFF**

Facilitator Gina Bartlett, Center for Collaborative Policy (CCP)

Note-taker Hannah Murray (CCP)